

DEPOSIT ACCOUNT CONTROL AGREEMENT

This Deposit Account Control Agreement (“Agreement”) is entered this ____ day of _____, 20____ by and among _____ (“Customer”), _____ (“Bank”) and the State of Utah, Division of Consumer Protection (“Secured Party”).

WITNESSETH

WHEREAS Customer maintains that certain Certificate of Deposit Account No. _____ (“Deposit Account”) with Bank pursuant to an agreement between Bank and Customer whereupon Customer has deposited with Bank the sum of \$ _____;

WHEREAS Customer has granted to Secured Party a security interest in the Deposit Account and all financial assets and other property now or at any time hereafter held in the Deposit Account; and

WHEREAS Secured Party, Customer and Bank have agreed to enter into this Agreement to perfect Secured Party’s security interest in the Deposit Account.

NOW THEREFORE, in consideration of their mutual covenants and promises contained herein, the parties agree as follows:

1. **AGREEMENT FOR CONTROL.** Bank is authorized by Customer and agrees to comply with all demands made by Secured Party with respect to the Collateral, without further consent or direction from Customer or any other party. Collateral is defined to mean the Deposit Account, including all financial assets now or hereafter credited to the said account, and all replacements or substitutions or other disposition of any kind of the foregoing.

2. **CUSTOMER’S RIGHTS WITH RESPECT TO THE COLLATERAL.**

(a) Until Bank is notified otherwise by Secured Party, Bank may distribute to Customer or any other party in accordance with Customer’s directions only that portion of the Collateral which consists of interest earned.

(b) Without Secured Party’s prior written consent, except to the extent permitted by the preceding paragraph: (i) neither Customer nor any party other than Secured Party may withdraw any Collateral from the Deposit Account, and (ii) Bank will not comply with any request to withdraw any Collateral from the Deposit Account given by any party other than Secured Party.

(c) Bank shall not make any further distributions of any Collateral to any party other than the Secured Party except upon either written or oral notice from Secured Party.

3. **BANK’S REPRESENTATIONS AND WARRANTIES.** Bank represents and warrants to Secured Party that:

(a) The Deposit Account is maintained with Bank solely in Customer's name.

(b) Bank has no knowledge of any claim to, security interest in or lien upon any of the Collateral, except: (i) the security interest in favor of the Secured Party, and (ii) Bank's liens securing fees and charges as described in the last paragraph of this Section.

(c) Any claim to, interest in or lien upon any of the Collateral which Bank now has or at any time hereafter acquires shall be junior and subordinate to the security interest of Secured Party in the Collateral, except for Bank's liens securing fees and charges owed by Customer with respect to the operation of the Deposit Account.

4. AGREEMENT OF BANK AND CUSTOMER. Bank and Customer agree that:

(a) Bank shall flag its books, records and systems to reflect Secured Party's security interest in the Collateral and shall provide notice thereof to any party making inquiry as to Customer's accounts with Bank to whom Bank is legally required or permitted to provide information.

(b) Bank shall send copies of all statements relating to the Deposit Account simultaneously to Customer and Secured Party.

(c) Bank shall promptly notify Secured Party if any other party asserts any claim to, security interest in or lien upon any of the Collateral and Bank shall not enter into any control, custodial, or other similar agreement with any other party that would create or acknowledge the existence of any such other claim, security interest or lien.

(d) Without Secured Party's prior written consent, Bank and Customer shall not amend or modify the agreement that relates to the Deposit Account, other than: (i) amendments to reflect ordinary and reasonable changes in Bank's fees and charges for handling the Deposit Account, and (ii) operational changes initiated by Bank as long as they do not alter any of Secured Party's rights hereunder.

(e) Neither Bank nor Customer shall terminate their agreement for the Deposit Account without giving thirty (30) days prior written notice to Secured Party.

5. AGREEMENT OF CUSTOMER. Customer agrees to indemnify and hold harmless Bank, its officers, directors, employees and agents, against claims, liabilities or expenses (including reasonable attorney's fees) arising out of Bank's compliance with any instructions from Secured Party with respect to the Deposit Account, except if such claims, liabilities or expenses are caused by Bank's negligence or willful misconduct.

6. MISCELLANEOUS.

(a) This Agreement shall not create any obligation or duty of Bank except as expressly set forth herein.

(b) As to the matters specifically the subject of the Agreement, in the event of any conflict between this Agreement and the Deposit Agreement or any other agreement between Bank and Customer, the terms of the Agreement shall control.

(c) All notices, requests and demands which any party is required or may desire to give to any other party under any provision of this Agreement must be in writing (unless otherwise specifically provided) and delivered to each party at the address set forth below or to such other address as any party may designate by written notice to all other parties. Each such notice, request and demand shall be deemed given or made if sent by hand delivery or if sent by U.S. mail, postage prepaid.

(d) This Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, legal representatives, successors and assigns of the parties.

(e) This Agreement shall terminate upon: (i) Bank's receipt of written notice from Secured Party expressly stating that Secured Party no longer claims any security interest in the Collateral, or (ii) termination of the Deposit Account pursuant to the terms hereof and Bank's delivery of all Collateral to Secured Party or its designee in accordance with Secured Party's written instructions.

(f) This Agreement shall be governed by and construed in accordance with the laws of the State of Utah.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth below.

BANK:

SECURED PARTY:
DIVISION OF CONSUMER PROTECTION

By: _____

Director

Its:

PO Box 146704

Address:

Salt Lake City, Utah 84114-6704

CUSTOMER

By: _____

Its:

Address:

SECURITY AGREEMENT

This Security Agreement (“Agreement”) is entered this _____ day of _____, 20____ by and between the Division of Consumer Protection (“Secured Party”), and _____ (“Applicant”).

WITNESSETH

WHEREAS Applicant has applied with Secured Party for a certificate of registration regarding:

- Telemarketing
- Health Spa
- Postsecondary Proprietary School
- Credit Services Organization
- Debt Management Company
- Other _____ ;

WHEREAS the applicable statute requires Applicant to provide a performance surety in the form of a bond, letter of credit or certificate of deposit; and

WHEREAS Applicant desires to comply with the surety requirement by granting to Secured Party a security interest in that certain Certificate of Deposit Account No. _____ (“Deposit Account”), which account is maintained by _____ (“Bank”).

NOW THEREFORE, in consideration of their mutual covenants and promises contained herein, the parties agree as follows:

1. **SECURITY INTEREST.** Applicant hereby grants to Secured Party a security interest in the Deposit Account, including all financial assets now or hereafter credited to the said account, and all replacements or substitutions or other disposition of any kind of the foregoing (“Collateral”). This security interest shall secure the full payment and performance of Applicant’s obligations as determined by the Secured Party under the statutes and rules that are applicable to the registration that it has applied for.

2. **PERFECTION OF SECURITY INTEREST.** Applicant agrees to do all acts which Secured Party deems necessary or desirable to protect the Collateral or to otherwise carry out the provisions of this Agreement; including but not limited to the execution of a Deposit Account Control Agreement.

3. **WARRANTIES.** Applicant warrants that the Collateral is maintained with Bank solely in Applicant’s name, that it has title to the Collateral and that there are no other claims against the Collateral. Applicant covenants to notify Secured Party of any claim, lien, security interest or other encumbrance made against the Collateral and shall defend the Collateral against any claim, lien, security interest or other encumbrance adverse to Secured Party.

4. **MAINTENANCE OF COLLATERAL.** Applicant shall preserve the Collateral for the benefit of the Secured Party. So long as this Agreement is in force, neither the Applicant nor any party other than the Secured Party may make withdrawals from the Deposit Account, except that Applicant may withdraw such portion of the Collateral which consists of interest earned. Applicant shall pay all taxes, assessments, or all other charges on the Collateral when due.

5. **DEFAULT.** Any one or more of the following events shall be the cause for Applicant's default:

- (a) Any representation made by Applicant with is untrue or any warranty is not fulfilled;
- (b) Applicant fails to perform its obligations as set forth in the statute or rules that are applicable to the registration that it has applied for;
- (c) Applicant fails to pay any fine or assessment as determined by the Secured Party; or
- (d) Applicant fails to perform its obligations as set forth in the Deposit Account Control Agreement.

6. **RIGHTS OF SECURED PARTY.** In addition to any other rights and remedies it may have, Secured Party may exercise any of the rights and remedies accorded a secured party by the Utah Uniform Commercial Code, including but not limited to Utah Code Ann. §70A-9a-607.

7. **NOTICES.** Any notice under this Agreement shall be in writing and shall be deemed delivered if mailed, postage prepaid, to a party at the addresses noted below or as may be specified by written notice given after the date hereof.

8. **SUCCESSORS AND ASSIGNS.** This Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, legal representatives, successors and assigns of the parties.

9. **AMENDMENTS.** This Agreement may be amended or modified only in writing signed by all parties hereto.

10. **ATTORNEY FEES AND COSTS.** In the event that it becomes necessary for either party to enforce the terms of this Agreement, the prevailing party shall be reimbursed its costs and expenses, including a reasonable attorney's fee.

11. **GOVERNING LAW.** This Agreement shall be governed by and construed under the laws of the State of Utah.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth below.

APPLICANT:

SECURED PARTY:
DIVISION OF CONSUME PROTECTION

By: _____

Director

Its:

PO Box 146704

Address:

Salt Lake City, Utah 84114-6704